IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.685 OF 2003

IN

SUIT NO. 677 OF 2003

Jay Vishwambhari CHSL & anr .. Plaintiffs

versus

M.D.Enterprises & ors .. Defendants

Mr.M.P.Vashi for Plaintiff

Mr.S.M.Khaire for Defendant nos. 1 to 3.

CORAM : D.G. KARNIK, J

DATED : 8th April 2005.

P.C:-

1. Heard learned counsel for the parties. The plaintiff-society entered into a agreement with the defendant no. 1 under which the defendant no. 1 was granted development rights for developing the suit property. There exists an existing building on the property. Disputes having arisen between the parties the plaintiff claims to have terminated the development agreement. The plaintiff therefore claims

an injunction restraining the defendant no. 1 from carrying out the development in pursuance of the said development agreement which has been terminated.

2. This court has consistently taken a view that no decree for specific performance of a development agreement can be granted. The defendant no.1 would therefore not be entitled to claim specific performance of the development agreement This is all the more true because, the development agreement has already been terminated. In the circumstances, the plaintiff-society is entitled to a injunction restraining the defendant no. 1 from carrying out the development work pending hearing and decision of the suit. Hence, motion is allowed in terms of prayer (a).

D.G.KARNIK, J

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